

Attachment B - Open Space Agreement

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 044-233-014

AGRICULTURAL OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE
EASEMENT TO THE COUNTY OF SAN LUIS OBISPO

THIS AGREEMENT is made and entered into this _____ day of _____,
20____, by and between JOHN M. GARDNER, SUCCESSOR TRUSTEE OF THE
GARDNER FAMILY TRUST UNDER TRUST AGREEMENT DATED SEPTEMBER 1,
1989, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS OBISPO, a
political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Owner is the record owner of certain real property (hereinafter
referred to as the "Owner's Property") located in the unincorporated area of County of
San Luis Obispo, State of California, which is more particularly described in Exhibit A
attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, as a condition of approval of Conditional Use Permit
SUB2007-00055 authorizing an agricultural lands cluster division of real property and as
a condition precedent to the approval of a final subdivision map for Parcel Map

ck. title rpt. / Parcel Map CO 10-0025
Revised: July 24, 2012

CO 10-0025 by County for Owner's Property, Owner is required to enter into an agreement with the County, on behalf of himself and his successors in interest, whereby the Owner grants an open-space easement to the County for the benefit of the public, including the lots being created in said subdivision; and

WHEREAS, Owner intends that the restrictions contained in this agreement shall apply to that portion of Owner's Property (hereinafter referred to as the "Subject Property") which is more particularly described in Exhibit B attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, execution of this agreement by Owner and County, and the subsequent performance of its obligations by Owner and his successors in interest, will satisfy the requirement for dedication of an open-space easement imposed by the County's general plan and land use regulations and by condition 25 of the conditions of approval of the tentative subdivision map referred to above; and

WHEREAS, the Subject Property has certain natural scenic beauty and important agricultural conservation values, and both Owner and County desire to preserve and conserve for the public benefit the great scenic beauty and the agricultural conservation values of said property of the Owner; and

WHEREAS, Owner is willing to grant to County the scenic use, as hereinafter expressed, of the land and thereby protect and preserve the agricultural and scenic values of the Subject Property by the restricted use of said property by Owner through the imposition of the conditions hereinafter expressed; and

WHEREAS, both Owner and County intend that the terms, conditions, and restrictions of the open-space easement granted in this agreement are in compliance with Government Code sections 51070 through 51097, inclusive, hereinafter referred to

as the "Open-Space Easement Act of 1974," so as to be an enforceable restriction under the provisions of Revenue and Taxation Code section 422; and

WHEREAS, Owner has supplied County with a current title company preliminary title report or preliminary subdivision guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on the Subject Property.

NOW, THEREFORE, in consideration of the premises and in compliance with the provisions of Government Code sections 51070 through 51097, inclusive, and in further consideration of the mutual promises, covenants, and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Grant of open-space easement. Owner hereby grants to County, for the term specified in paragraph 8 below, an open-space easement in and to the Subject Property described above. The open-space easement granted herein conveys to County an estate and interest in the real property of the nature and character specified in the Open-Space Easement Act of 1974, which is subject to the express conditions and restrictions imposed herein upon the use of the property by Owner. To that end, and for the purpose of accomplishing the intent of the parties hereto, Owner covenants on behalf of himself, his successors and assigns with the County, its successors and assigns to do and refrain from doing, severally and collectively, upon the Subject Property, the various acts hereinafter mentioned.

2. Restrictions on use of the Subject Property. The restrictions imposed upon the use of the Subject Property by Owner and his successors in interest and the acts which

Owner and his successors in interest shall refrain from doing, and permit to be done, upon the Subject Property are as follows:

(a) No buildings, structures, or other improvements shall be placed, constructed, or erected upon the Subject Property except for the construction of a ranch/farm headquarters within the approved 2.0 acre building site which is shown on Exhibit C attached hereto and incorporated by reference herein as though set forth in full, and farm support housing and the other structural uses as permitted by Section 22.22.150B.8 of the San Luis Obispo County Code, and except as otherwise authorized by the approved conditional use permit and subdivision map referred to above.

(b) No advertising of any kind or nature shall be located on or within the Subject Property, except in connection with agricultural-related uses on the Subject Property and except for advertising related to the initial sale of the clustered lots created by the approved conditional use permit and final subdivision map referred to above.

(c) Owner shall not plant or permit to be planted any vegetation upon the Subject Property except for crop production, range land grasses, natural or ornamental landscaping, and as otherwise authorized by Section 22.22.150B.8.d of the San Luis Obispo County Code, and as necessary for erosion control.

(d) Except as necessary for agricultural and agricultural-related use of the Subject Property and for the construction, alteration, relocation, and maintenance of public roads, private access roads, trails, or driveways, if any, as shown on the approved conditional use permit or final subdivision map referred to above, the general topography of the landscape shall be maintained in its present condition and no grading, excavation, or topographic changes shall be made.

(e) No use of the Subject Property which will or does materially alter the landscape or other attractive scenic features of the property, other than those specified herein, shall be done or suffered, except for agricultural use of the Subject Property.

(f) Owner shall not extract natural resources from the Subject Property, except for development of Owner's underlying water rights.

(g) Owner shall not cut timber, trees, or other natural growth, except as may be required for agricultural use of the Subject Property and fire protection, thinning, elimination of diseased growth, and similar protective measures.

(h) Except as related to agricultural use, Owner shall not use the Subject Property or any portion thereof as a parking lot, storage area, or dump site or otherwise deposit or allow to be deposited on the Subject Property or any portion thereof, temporarily or otherwise, anything whatsoever which is not indigenous or natural to the Subject Property.

(i) Except as related to agricultural use, Owner shall not cover or cause the Subject Property to be covered in whole or in part with any asphalt, stone, concrete, or other material which does not constitute natural cover for the land nor otherwise disturb the natural cover of the land unless otherwise authorized by the provisions of this agreement.

(j) No land division of the Subject Property shall occur or be applied for by Owner or his successors in interest, nor shall Owner or his successors in interest, otherwise convey (other than under threat of condemnation) a portion of the Subject Property less than the whole to one or more parties or convey the Subject Property to two or more parties each of whom acquire title to less than the whole of the Subject

Property. Any such conveyance or transfer the Subject Property or a portion thereof by Owner or his successors in interest shall be considered null and void.

3. Reservations of use by Owner. Notwithstanding the provisions of paragraph 2 above, the following property rights in the Subject Property are excepted from this grant and are expressly reserved to Owner:

(a) The right to maintain all existing private roads, bridges, trails, and structures lawfully erected and maintained upon the Subject Property.

(b) The right to construct, develop, and maintain all roads, utilities, structures, and other improvements authorized by the approved conditional use permit and final subdivision map referred to above, and any amendments or modifications thereto which may be approved by the County.

(c) The right to construct, develop, and maintain private water sources and water systems on the Subject Property for the use and benefit of the Subject Property and the clustered lots authorized to be created by the approved conditional use permit and final subdivision map referred to above.

(d) The right to undertake any of those uses (including agricultural cultivation) on the Subject Property permitted by Section 22.22.150B.8.c and B.8.d of the San Luis Obispo County Code.

4. Compliance with County regulations. Land uses permitted or reserved to Owner in this agreement are subject to and require compliance with all applicable County ordinances and regulations, including those regulating land use.

5. Construction of improvements. Owner shall not construct or permit the construction of any improvements on the Subject Property except as expressly reserved herein or as authorized in the Open-Space Easement Act of 1974. Provided, however,

nothing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County or the Public Utilities Commission.

6. No authorization for public trespass. The grant of easement contained herein and its acceptance by the County of San Luis Obispo does not authorize and is not to be construed as authorizing the public or any member thereof to trespass upon or use all or any portion of the Subject Property or as granting to the public or any member thereof any tangible rights in or to the Subject Property or the right to go upon or use or utilize the Subject Property in any manner whatsoever. It is understood that the purpose of this agreement is solely to restrict the uses to which the Subject Property may be put so that the property may be kept as near as possible in its natural condition or in agricultural production for the benefit of the public, including the lots being created in the above subdivision.

7. Effect on prior easements. Nothing contained in this agreement shall limit or affect any easements that are of record and that have been heretofore granted by Owner on, over, under, or across the Subject Property or any portion thereof.

8. Duration of easement. The grant of easement to County contained in this agreement shall be effective when it has been approved and accepted by resolution of the Board of Supervisors in the manner required by law, and it shall remain in effect in perpetuity unless abandoned or otherwise terminated by the Board of Supervisors in accordance with the provisions of the Open-Space Easement Act of 1974. Provided, however, no easement shall be abandoned or otherwise terminated without first

obtaining approval of an amendment to the conditional use permit (SUB2007-00055) authorizing such abandonment or termination.

9. Enforceable restriction. Upon acceptance of the open-space easement granted herein, the Subject Property shall be deemed to be "enforceably restricted" within the meaning of section 422 of the Revenue and Taxation Code and section 8 of Article XIII of the Constitution of the State of California.

10. Binding on successors in interest. This agreement shall be deemed an equitable servitude and a covenant running with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest. Any conveyance, transfer, or sale made by Owner of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

11. Effect of waiver. County's waiver of the breach of any one term, covenant, or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

12. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

13. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be

that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

14. Enforceability. If any term, covenant, condition, or provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

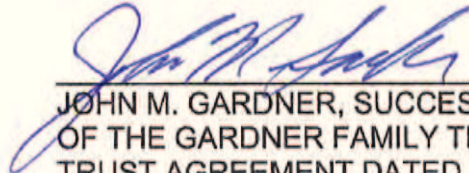
15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, Room 300, San Luis Obispo, California 93408. Notices required to be given to Owner shall be addressed as follows John M. Gardner, 7114 Orcutt Rd, San Luis Obispo, California 93401.

Provided that any party may change such address by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

16. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by the Owner and the successors in interest to all or any portion of Owner's Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER



JOHN M. GARDNER, SUCCESSOR TRUSTEE
OF THE GARDNER FAMILY TRUST UNDER
TRUST AGREEMENT DATED SEPTEMBER 1,
1989

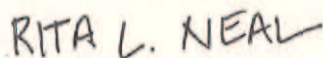
COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:



RITA L. NEAL
County Counsel

By: 

Deputy County Counsel

Dated: 11/7/13

[NOTE: This Agricultural Open-Space Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

3052nwagr.doc

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

On _____, before me, _____, Deputy
County Clerk-Recorder, County of San Luis Obispo, State of California, personally
appeared _____, who proved to me
on the basis of satisfactory evidence to be the person whose name is subscribed to the
within instrument and acknowledged to me that he/she executed the same in his/her
authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JULIE L. RODEWALD, County Clerk-
Recorder and Ex-Officio Clerk of the Board
of Supervisors

By: _____
Deputy County Clerk-Recorder

[SEAL]

EXHIBIT A

All of Parcel Map CO 10-0025 as shown on a map recorded in Book _____, Pages _____ through _____ inclusive of Parcel Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

3052nwagr.doc-A

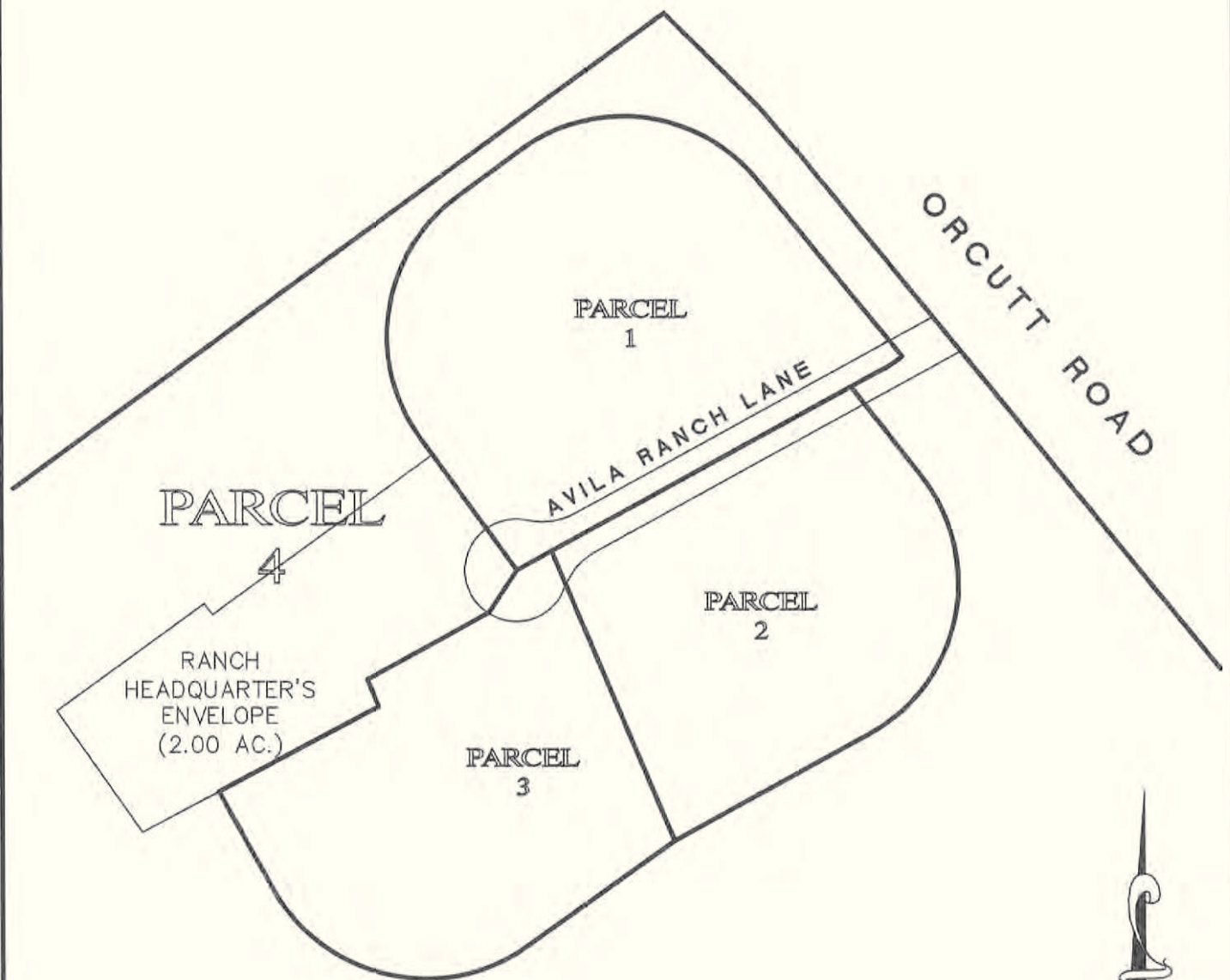
EXHIBIT B

Lot 4 of Parcel Map CO 10-0025 as shown on a map recorded in Book _____,

Pages _____ through _____ inclusive of Parcel Maps, in the office of the County

Recorder of the County of San Luis Obispo, State of California.

3052nwagr.doc-B



PARCEL

4

RANCH
HEADQUARTER'S
ENVELOPE
(2.00 AC.)

PARCEL
1

AVILA RANCH LANE

PARCEL
2

PARCEL
3

ORCUTT ROAD



EXHIBIT "C"

NOT TO SCALE

DATE OF PLAT: 11/01/2013

PARCEL MAP CO-10-0025

AGRICULTURAL OPEN-SPACE AGREEMENT

PREPARED FOR: GARDNER
PREPARED BY: DAN KING SURVEYING
P O BOX 4903
PASO ROBLES, CA 93447

PHONE: (805) 238-5427
www.dksurveying.com

DKS JOB NO.: 11-049

STATE OF CA)SS
COUNTY OF San Luis Obispo

On 10/28/13, before me, Kyle M Smith, Notary
Public, personally appeared John m Gardner

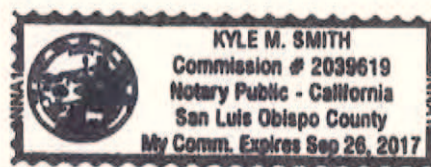
_____, who proved to me on the basis of satisfactory evidence to
be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature

Kyle M Smith



My Commission Expires: _____

This area for official notarial seal

Notary Name: _____

Notary Phone: _____

Notary Registration Number: _____

County of Principal Place of Business: _____